

# EXHIBIT K

Jonathan White

May 05, 2022

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

LA UNION DEL PUEBLO )  
ENTERO, et al, )  
 )  
Plaintiffs, )  
 ) CIVIL ACTION  
VS. )  
 ) NO.: 5:21-cv-844 (XR)  
STATE OF TEXAS, et al, ) (Consolidated Cases)  
 )  
Defendants. )  
 )

-----  
ORAL DEPOSITION OF

JONATHAN WHITE

Designated Representative for the Office of the Texas

Attorney General

MAY 5, 2022  
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ORAL DEPOSITION OF JONATHAN WHITE, produced as a  
witness at the instance of the DEFENDANTS, and duly  
sworn, was taken in the above-styled and numbered cause  
on May 5, 2022, from 10:02 a.m. to 4:06 p.m. before Miah  
Parson, CSR in and for the State of Texas, reported by  
oral stenography, at the Offices of the Attorney General  
300 W. 15th Street Austin, Texas 78701, pursuant to the  
Federal Rules of Civil Procedure and the provisions  
stated on the record or attached hereto.

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A P P E A R A N C E S

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ALSO PRESENT:

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Hani Mirza-OCA

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1 documents with you to the deposition today?

2 A. I did not.

3 Q. Okay. Great. Thank you. So let's get  
4 started. I understand that you are the chief of the  
5 Election Integrity Division at the OAG; is that correct?

6 A. That's correct.

7 Q. What is the Election Integrity Division?

8 A. It's a Division with the attorney general  
9 that's tasked with the prosecution of offenses under the  
10 election code or election offenses under Texas law.

11 Q. When was it -- the -- the division established?

12 A. I believe it was around 2018. Well, actually  
13 let me -- let me take that -- let me walk that back.  
14 The Election Integrity Section would have been -- begun  
15 in 2018. The division was popped out approximately a  
16 year ago.

17 Q. That's gonna be something I'm gonna be asking  
18 about because there's a lot of nomenclature sort of  
19 floating around and I just want to get all of that  
20 straight.

21 A. Yes, sir. Understood.

22 Q. For the Election Integrity Division, what was  
23 the impetus for that formation as an independent pop out  
24 division?

25 MR. HUDSON: I object to that to the extent



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1 that it would encroach on deliberative process,  
2 attorney/client or attorney work product, to the extent  
3 that you can respond without encroaching on those, feel  
4 free to do so. Otherwise I'm gonna instruct you not to  
5 answer.

6 A. Yeah, without going into any deliberative  
7 process, I think probably the same reason as the  
8 Election Integrity Section was formed within the Special  
9 Prosecutions Division which is to further focus  
10 dedicated resources toward election and integrity issues  
11 because they are so complex.

12 Q. (BY MR. DOLLING) Does the Election Integrity  
13 Division have a specific budget that you know?

14 A. I'm aware of a budget allocation that is  
15 tracked by -- by our Budget Division for Election  
16 Integrity. It was a cost center that was created in  
17 2019, but that includes both the investigation unit  
18 which is housed actually under a separate division and  
19 the Election Integrity Prosecution Division, EID.

20 Q. When I say Election Integrity Division, are you  
21 understanding it to include the investigators and the  
22 attorneys?

23 A. It does not.

24 Q. It does not?

25 A. I can explain.



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1 A. Insofar as they comprise another category of  
2 common offenses we're responsive to those.

3 Q. Okay. Are there any suspected offenses under  
4 the election code that the OAG simply does not  
5 investigate even when there is credible evidence of that  
6 offense?

7 A. I -- I would say not that I'm aware of although  
8 there are certain types of offenses that present a  
9 particular problems for prosecution.

10 Q. Can you elaborate?

11 MR. HUDSON: I'm gonna object to the extent  
12 that that will encroach on attorney/client, attorney  
13 work product privileges or investigative privileges to  
14 the extent that you can respond without encroaching on  
15 those privileges you're free to do so. Otherwise I'm  
16 instructing you not to answer.

17 A. Without going into mental impressions or any  
18 deliberative process I can say that the elements of  
19 campaign-finance offenses are particularly complex and  
20 problematic in the way that the laws are drafted.

21 Q. (BY MR. DOLLING) Okay. So is it fair to say  
22 that the OAG has a policy of investigating all credible  
23 allegations of an offense under the election code?

24 A. I think that's probably accurate it's hard to  
25 elaborate or nuance that answer without getting into



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1 deliberative process.

2 Q. Okay. And a sort of same question with respect  
3 to prosecutions. Are there any suspected offenses under  
4 the election code that the OAG just does not prosecute?

5 MR. HUDSON: Same objection. Same  
6 instructions.

7 A. We do not have any blanket policies about  
8 offenses that we don't prosecute. We evaluate each case  
9 based on legal and factual issues and proceed  
10 accordingly.

11 Q. (BY MR. DOLLING) Is it fair to say that the  
12 OAG has a policy of prosecuting offenses under the  
13 election code for which it believes there is sufficient  
14 evidence to convict?

15 A. Yes, I think so.

16 Q. Okay. And so back to this -- what are we on  
17 No. 3, I think. Back to Exhibit No. 3, you mentioned  
18 that it was created for training local election  
19 officials, I believe?

20 A. I don't think I described the purpose exactly,  
21 but the purpose is primarily to familiarize elections  
22 officials with who we are, what we do, some of the signs  
23 for activity that they might recognize and look into to  
24 determine whether they feel there is -- are possible  
25 offenses that require investigating. And instruct them

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1 administrators sporadically, but those are the type and  
2 quality of referrals that we would like to see.

3 Q. Okay. So we can just put this one aside for a  
4 moment. So I'm handing you what I marked as Exhibit  
5 No. 4. This is the Texas Court of Criminal Appeals'  
6 opinion majority opinion and Zena Stephens are you  
7 familiar with the decision in Zena Stephens.

8 (Exhibit No. 4 marked.)

9 A. Yes, sir.

10 Q. (BY MR. DOLLING) And if we can just turn --  
11 oh, I might have had an extra page in there. I'm not  
12 sure if your copy has an extra page, but there might be  
13 a random extra page. And if we turn to the last page  
14 here, I'm gonna read the holding out here. We hold that  
15 the grant of prosecutorial authority in Section 273.021  
16 of the Texas election code violates article 2 Section 1  
17 of the Texas Constitution the separation of powers  
18 clause; is that correct?

19 A. Correct.

20 Q. Could you please summarize the OAG's  
21 interpretation of the holding in Stephens?

22 MR. HUDSON: Object to the extent that it  
23 will call for attorney/client privilege or attorney work  
24 product, if you can answer without encroaching on  
25 attorney work product or attorney/client privilege



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1 you're free to do so. Otherwise I'm gonna instruct you  
2 not to answer.

3 A. I think that's probably beyond this scope of  
4 what I prepared to present an interpretation on -- on  
5 behalf of the agency, but I do think that I can refer  
6 you to our public filings in the case before the CCA and  
7 our motion for rehearing which is still currently under  
8 consideration.

9 Q. (BY MR. DOLLING) So I was gonna ask are you  
10 aware that the OAG has moved for reconsideration in  
11 Stephens and it sounds like you have -- you are.

12 A. Yes, sir.

13 Q. And the motion has not being decided?

14 A. Correct.

15 Q. Does the OAG considers Stephens to be  
16 controlling law despite the pending motion to  
17 reconsider?

18 MR. HUDSON: Same objection. Same  
19 instructions.

20 A. Yeah, without getting into I guess deliberative  
21 process, I'm -- I'm not sure how to answer your  
22 question.

23 Q. (BY MR. DOLLING) Okay. That's fine. I'm  
24 handing you what I've marked as Exhibit No. 5. This is  
25 Chapter 273 of the Texas Election Code. Please take a

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1 moment to look over it and when you're ready turn to  
2 section 273.021.

3 (Exhibit No. 5 marked.)

4 A. Yes, sir.

5 Q. (BY MR. DOLLING) So Section 273.021 reads,  
6 Prosecution by the Attorney General Authorized. The  
7 attorney -- Subsection A, the attorney general may  
8 prosecute a criminal offense prescribed by the election  
9 laws of this state. And Subsection B, the attorney  
10 general may appear before a grand jury in connection  
11 with an offense. The attorney general is authorized to  
12 prosecute under Subsection a and Subsection c. The  
13 authority to prosecute prescribed by this subchapter  
14 does not affect the authority to arrive from other law  
15 to prosecute the same offenses. Did I read that all  
16 correctly?

17 A. I believe you did.

18 Q. So does the OAG agree that after Stephens the  
19 Attorney General no longer has the authority to  
20 independently prosecute offenses under the election code  
21 pursuant to section 273.021?

22 MR. HUDSON: Same objections concerning  
23 privilege, attorney/client, attorney work product,  
24 investigative, and deliberative process. Same  
25 instructions.



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1 A. I -- I didn't prepare in terms of the topics in  
2 the deposition presented to give an agency wide opinion  
3 or interpretation of the Stephens' opinion.

4 Q. (BY MR. DOLLING) What is your personal  
5 interpretation of the Stephens' opinion?

6 MR. HUDSON: Same objection, same  
7 instructions.

8 A. I think that would probably be testifying on my  
9 own work product or mental impressions about the case  
10 and our position. So I -- I think I may be in the same  
11 position.

12 Q. (BY MR. DOLLING) Okay. Does the OAG claim the  
13 Attorney General has authority to independently  
14 prosecute offenses under the election code pursuant to  
15 any other provision of Texas law other than  
16 Section 273.021 of the election code?

17 MR. HUDSON: Same objection, same  
18 instruction. And at the risk of being accused of being  
19 a speaking objection I'll just tell you if there's  
20 something in the public record concerning the AG's  
21 position you're free to comment on that.

22 A. Yeah, in terms of public record I'm not aware  
23 of any authority other than the statutory authority  
24 granted in 273.021 that has now been challenged by  
25 Stephens to give the Attorney General independent



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1 prosecution authority over election offenses.

2 Q. (BY MR. DOLLING) Okay.

3 A. I hope that answers your question.

4 Q. Thank you. So going forward I'd like to use  
5 the term county prosecutors to refer to a county  
6 prosecutor in charge of a county in which an election  
7 code offense occurs which I understand could be the  
8 county attorney, it could be the district attorney, it  
9 could be the criminal district attorney. So if I use  
10 the term county prosecutor, will you understand what  
11 I --

12 A. Yes, sir.

13 Q. Okay. Is it accurate to say that after  
14 Stephens the OAG needs a county prosecutor's consent to  
15 prosecute an offense under the election code that  
16 occurred in that prosecutor's county?

17 MR. HUDSON: Objection. Same instruction.

18 A. Yeah, I think we're still in the area where I'm  
19 being asked to present an interpretation of the  
20 Stephen's opinion in our pending litigation on behalf of  
21 the agency which I didn't prepare to do. I think  
22 there's probably a way that I could answer your  
23 questions, but I don't think I can answer these specific  
24 line of questions.

25 Q. (BY MR. DOLLING) Okay. I think we -- we'll



1 OAG cannot maintain the prosecution because the OAG was  
2 independently prosecuting the case?

3 A. More or less those would take the form of  
4 pretrial writ of habeas corpus or a motion to dismiss  
5 the indictment and generally the remedy that's being  
6 sought by the Defendants is for the entire case to be  
7 thrown out.

8 Q. And that's on the basis of the prosecution  
9 being carried out by the OAG's alone?

10 A. In most cases, yes.

11 Q. What is -- what is the not most cases?

12 A. We've gotten challenges based on the fact that  
13 we've had anything to do with the case, even if the  
14 local district attorneys office consented to the  
15 prosecution or was even involved in the investigation  
16 and perhaps prosecution as well. So it opens a door to  
17 a whole lot of challenges.

18 Q. Has the OAG been forced to drop any of those  
19 pending prosecutions after Stephens or has it maintained  
20 them?

21 A. I believe that we have maintained those  
22 prosecutions pending final resolution of Stephens. I  
23 don't think there are any cases that have been dropped.

24 Q. And that would encompass, I guess any case that  
25 was not -- on Exhibit 6 that was not resolved prior to



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1 the decisions in Stephens?

2 A. I think that's correct if I'm understanding  
3 your question correctly and -- and what I -- the cases  
4 I'm talking about would probably be found on the  
5 prosecutions pending list.

6 Q. Yeah, but there have not been any challenges to  
7 resolved cases on the basis of Stephens?

8 A. Not yet.

9 Q. Okay. Does the OAG anticipate that there will  
10 be?

11 MR. HUDSON: Object to the extent that that  
12 would encroach on attorney/client privilege or attorney  
13 work product. To the extent you can answer without  
14 encroaching on those privileges your free to do so.  
15 Otherwise I'm gonna instruct you not to answer.

16 A. I think I'll need to follow the advice of  
17 counsel on that.

18 Q. (BY MR. DOLLING) Does the OAG intend to  
19 continue to prosecute election code offenses after  
20 Stephens?

21 MR. HUDSON: I object to the extent that  
22 that will encroach on attorney/client privilege or  
23 attorney work products. To the extent that you can  
24 answer without encroaching on those privileges you're  
25 free to do so. Otherwise I'm instructing you not to



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1 answer.

2 A. I think you could technically say that we're  
3 still prosecuting the cases that are pending, certainly  
4 even the ones that have been challenged on the basis of  
5 Stephens. Those prosecutions are still pending. We're  
6 still on the position of representing the State of Texas  
7 on those offenses and we have a large number of other  
8 prosecutions where we are still involved in the  
9 prosecution where we're working jointly with district  
10 attorneys offices.

11 Q. (BY MR. DOLLING) Okay. Has the OAG brought any  
12 new prosecutions after Stephens where the prosecution  
13 began after Stephens?

14 A. Let me refresh my memory with the bottom of the  
15 list of resolved cases. I believe the answer to that I  
16 believe is no.

17 Q. Okay. Thank you.

18 MR. HUDSON: For purposes of the record  
19 Mr. White, can you identify the page that you reviewed  
20 to refresh your recollection?

21 A. Page -- Pages 16 and 17 of Exhibit 6.

22 MR. HUDSON: Could you identify that by  
23 Bates stamp please?

24 A. States 087338 and 339.

25 MR. HUDSON: My apologies.

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1 know, that sort of thing.

2 Q. Is it the policy of the OAG to always loop in  
3 the county prosecutor?

4 A. We don't have a hard and fast guideline on  
5 that, but it's been a best practice for our group  
6 because of resources and looking to leverage local  
7 resources wherever possible, wherever we have a DA or I  
8 say DA because most circumstances it's a district  
9 attorney, but local prosecutor, county prosecutor. We  
10 would try to loop them in to leverage resources and see  
11 if they have any willingness to get involved with the  
12 case.

13 Q. Does the OAG ever sort of investigate  
14 circumstances, decide that they should be prosecuted and  
15 then try to hand it off to the county prosecutor and not  
16 take part in the prosecution?

17 A. I don't think so as such, but, you know, there  
18 would be an evaluation of that county's willingness to  
19 be involved, available resources to take on an election  
20 fraud prosecution, prosecutors with knowledge that the  
21 election laws, whether the DA actually has any local  
22 political conflict or difficulty with being involved in  
23 the case. And it's, I mean it's a sliding scale with  
24 many different parts that would determine how involved a  
25 DA could be, but, you know, if a DA told us that he



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1 wanted to take lead on the case or wanted to have the  
2 case completely and not have us involved then that's  
3 what we would do.

4 Q. Has that ever happened?

5 MR. HUDSON: Object to the extent that that  
6 will encroach on attorney/client privilege and attorney  
7 work product doctrine. To the extent you can answer  
8 without encroaching on those privileges you're free to  
9 answer. Otherwise I'm instructing you not to.

10 A. Limiting my answer to cases that have  
11 information in the public record. I don't recall a  
12 case -- well, it would be very rare. I think that a --  
13 think about if I remember your question correctly I may  
14 have dumped it.

15 Q. (BY MR. DOLLING) I can repeat the gist of it.  
16 I'm not sure --

17 A. Yeah, that'd be great.

18 Q. But basically does -- has the OAG ever decided  
19 that circumstances warrant prosecution and then sort of  
20 just handed it off to a county prosecutor or the county  
21 prosecutor has done it independent of the OAG from that  
22 point forward?

23 MR. HUDSON: Same objection, same  
24 instructions. Go ahead.

25 A. I can't -- I can't think of a case that is in



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1 the public record where that has happened, but I don't  
2 think there's anything wrong with that scenario. I  
3 don't think there's anything wrong with us investigating  
4 a case and handing it off to a district attorneys office  
5 to do what they see fit with the case.

6 Q. (BY MR. DOLLING) Would the OAG ever hand it  
7 off in that way absent the county prosecutor asking you  
8 to hand it off in that way?

9 MR. HUDSON: Same objection, same  
10 instructions.

11 A. I don't think I can answer that without getting  
12 into deliberative process.

13 Q. (BY MR. DOLLING) Okay. Has the OAG had any  
14 communication with Harris County regarding concerns  
15 about fraud related to drive through voting?

16 MR. HUDSON: I'll object to the extent that  
17 that will encroach on attorney/client, attorney work  
18 product, investigative privilege, to the extent that you  
19 can answer without encroaching on those you're free to  
20 do so. Otherwise I'm instruct you not to answer.

21 A. Can I clarify by what you mean by Harris  
22 County?

23 Q. (BY MR. DOLLING) Any election official or  
24 county prosecutor employee I guess.

25 MR. HUDSON: Same objection, same



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1 instruction.

2 A. I'm -- I'm not aware of, I guess I don't think  
3 I'm prepared to answer that question in terms of any  
4 conversations about drive through voting with election  
5 officials in Harris County with regard to prosecutors  
6 I'm not aware.

7 Q. (BY MR. DOLLING) Does the OAG have concerns  
8 regarding fraud related to drive through voting?

9 MR. HUDSON: Same objection. Same  
10 instructions.

11 A. Follow the advice of counsel.

12 Q. (BY MR. DOLLING) Has the OAG had any  
13 communications with any election officials including  
14 county prosecutors regarding concerns about fraud  
15 related to drive through voting?

16 MR. HUDSON: Same objection, same  
17 instruction.

18 A. Yeah, without going into deliberative process  
19 and work product, I don't -- I don't know of anything I  
20 can answer to that.

21 Q. (BY MR. DOLLING) Has the OAG had any  
22 communications with Harris County election officials or  
23 county prosecutors regarding concerns about fraud  
24 related to 24 hour voting?

25 MR. HUDSON: Same objections, same



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1 instructions.

2 A. I think my answer would be the same on that  
3 one.

4 Q. (BY MR. DOLLING) Okay. And then has the OAG  
5 had any communications with any election officials or  
6 county prosecutors regarding concerns about fraud  
7 related to 24-hour voting?

8 MR. HUDSON: Same objection, same  
9 instructions.

10 A. I think same answer.

11 Q. (BY MR. DOLLING) Okay. Is it accurate to say  
12 that the OAG hears about most suspected offenses of the  
13 election code from outside referrals, outside of the  
14 OAG's office?

15 A. Absolutely.

16 Q. Earlier, I think you said that the majority of  
17 them come from the Secretary of States office; is that  
18 correct?

19 A. Strong majority.

20 Q. What is -- how -- if you could, could you put a  
21 number on that or percentage wise?

22 A. I --

23 MR. HUDSON: Object to form. Speculation.

24 A. Yeah, I could put a wide range on it. I'm ball  
25 parking, but certainly over half and it could be as much

1           So to that extent and to the extent that  
2     vote harvesting operations are complex, wide spread,  
3     touch a large number of individuals, focus on soft  
4     targets, elderly voters, sometimes voters with  
5     disabilities. They could -- it could be challenging to  
6     go in and find out what happened after the fact, as well  
7     as the fact that if vote harvesting is done correctly  
8     the process can be invisible to the voter.

9           Q. So the complexity mostly comes from  
10    difficulties in the investigative process because of the  
11    protections around voting, would you say?

12          A. I would say that those complexities extend into  
13    the prosecution as well.

14          Q. Okay. You mentioned that I think it was vote  
15    harvesting is wide spread. Do you mind just elaborating  
16    on that? What do you mean by wide spread?

17          A. In that context, I was referring to the fact  
18    that vote harvesting touches a large number of voters or  
19    ballots typically.

20          Q. Can you clarify what -- maybe put a number or  
21    range on what large means in this context?

22                 MR. HUDSON: So I'll object to the extent  
23    that that would encroach upon attorney/client, attorney  
24    work product, or investigative privileges. To the  
25    extent you can answer without encroaching on those



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1 you're free to do so. Otherwise I'm gonna instruct you  
2 not to.

3 A. From the standpoint of past investigations. A  
4 voter harvester can touch or control anywhere from 50  
5 votes to several hundred votes depending on the  
6 industriousness and experience of the harvester.

7 Q. (BY MR. DOLLING) Has the OAG taken through to  
8 conviction a case in which hundreds of votes were  
9 touched by a vote harvester?

10 A. Probably so, although that does not mean that  
11 we were able to prove hundreds of votes, bring hundreds  
12 of voters on the stand who were able to explain what  
13 happened to them, knew what happened to them, positively  
14 identified the person that came by. So typically what  
15 we end up litigating in court is a fraction of the  
16 activity of a vote harvester.

17 Q. So that's what you have attempted to prove, but  
18 you have not carried through to final verdict on those  
19 facts?

20 MR. HUDSON: Objection; form.

21 A. I'd say what we attempted to prove is typically  
22 what's pled in the indictment, however many counts of  
23 offenses were charged that would be a fraction of the  
24 total activity that occurred. And then from there we  
25 may reach a plea agreement, which may involve one

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1 OAG, well, I suppose you sort of answered this, but how  
2 often would the OAG decide to initiate a prosecution  
3 after completing an investigation based on a referral?

4 A. Whenever we made a determination that an  
5 offense occurred and that there was sufficient evidence  
6 for prosecution.

7 Q. Does the source of the referral make a  
8 difference in deciding to open an investigation?

9 MR. HUDSON: Object to the extent that that  
10 would encroach on attorney/client privilege or attorney  
11 work product. To the extent you can answer that without  
12 encroaching on those, you're free to do so. Otherwise  
13 I'm going to instruct you not to answer I'll also  
14 include on that investigative privilege.

15 A. We make decisions based on the strength of the  
16 evidence and not the source of referral, but as I said,  
17 most of our cases come through SOS, but they do come  
18 from varying sources prior to them.

19 Q. (BY MR. DOLLING) Currently or after Stephens  
20 if the OAG investigates, you know, on the basis of a  
21 referral and determines that a prosecution is warranted,  
22 how does it go about making that happen?

23 A. We would now present the case to a district  
24 attorneys office and allow them to decide whether to  
25 accept the case, reject the case, they would have the



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1 option of appointing us as a prosecutor. If they desire  
2 to do that, but the decision ultimately rests entirely  
3 currently on under our current policy with local  
4 prosecutors.

5 Q. And with respect to the pending -- you remember  
6 we talked about how there are a number of challenges  
7 right now post Stephens about pending prosecutions based  
8 on Stephens?

9 A. Yes.

10 Q. Did the -- has the OAG continued to prosecute  
11 those cases independently while awaiting the mandate or  
12 has the OAG reached out to the county -- the relevant  
13 county prosecutor for each one of those cases and  
14 obtained that county prosecutor's consent?

15 MR. HUDSON: Object to the extent that it  
16 would encroach on attorney/client, attorney work  
17 product, investigative privileges. To the extent you  
18 can answer that without encroaching on those privileges  
19 you're free to do so. Otherwise, I would instruct you  
20 not to answer.

21 A. The public record in some of these cases will  
22 indicate that we have obtained an appointment from local  
23 prosecutors in certain cases.

24 Q. (BY MR. DOLLING) And that appointment came  
25 after Stephens in a case that existed before Stephens?



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1 MR. HUDSON: Same objection. Same  
2 instructions.

3 A. In certain cases, yes.

4 Q. (BY MR. DOLLING) Is there a policy at the OAG  
5 to reach out to obtain consent in these cases post  
6 Stephens?

7 A. We haven't formulated an official policy on  
8 that, but our practice has been where there's an  
9 opportunity to obtain appointment or obtain a  
10 prosecution from a local prosecutor that we would seek  
11 that.

12 Q. Can you put a number -- out of the pending  
13 prosecutions in which the OAG has reached out to a  
14 county prosecutor or I guess in how many of the pending  
15 prosecutions has the OAG reached out to a county  
16 prosecutor to obtain consent?

17 MR. HUDSON: Object again based on the same  
18 privileges to the extent you can answer you can do so  
19 otherwise I'm gonna instruct you not to.

20 A. There are probably only a handful of cases  
21 where the public record would indicate that we have  
22 taken those actions to the extent that we have had  
23 conversations with other prosecutors about proceeding in  
24 the case I will follow the advice of counsel.

25 Q. (BY MR. DOLLING) In how many of the pending



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1 prosecutions reflected on this chart has the OAG been  
2 appointed by a county prosecutor to work on a  
3 prosecution?

4 A. Having refreshed my memory States 087336  
5 through 339, I'm seeing five cases where I believe a  
6 formal order appointing is on file in the public record.

7 Q. What is a formal appointment? Is it a  
8 document? Is it reflected in a document?

9 A. It is.

10 Q. Are there any county prosecutors in Texas with  
11 whom the OAG has a particularly good relationship?

12 MR. HUDSON: Object to the extent that that  
13 would encroach on attorney work product or  
14 attorney/client privilege or investigative privilege to  
15 the extent that you can respond to that without  
16 encroaching on these privileges you're free to do so.  
17 Otherwise, I'm gonna instruct you not to.

18 A. I don't think I can characterize relationships  
19 without getting into privilege materials, but if you do  
20 look at our prosecutions spreadsheets so the majority of  
21 counties where we have prosecuted cases indicate a  
22 working relationship with local prosecutors.

23 Q. (BY MR. DOLLING) Are there any county  
24 prosecutors with whom the OAG works more frequently  
25 beyond what you just mentioned as reflected in Exhibit



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1 No. 6?

2 MR. HUDSON: Same objection, same  
3 instructions.

4 A. No, I don't think the records indicate that. I  
5 don't think you'll see an indication of that in the  
6 records, no.

7 Q. (BY MR. DOLLING) Would your answer be the same  
8 to whether there are any county prosecutors who reach  
9 out to the OAG for advice about election code offenses?

10 MR. HUDSON: Same objection, same  
11 instructions.

12 A. I don't know that you'd be able to ascertain  
13 that from the records they would be included in counties  
14 probably that we have had prosecutions, but they would  
15 be a subset.

16 Q. (BY MR. DOLLING) Okay. Can you elaborate on  
17 that at all?

18 MR. HUDSON: Same objection, same  
19 construction.

20 A. Trying to stick with what's public record  
21 without going into privilege material. I think I can  
22 just say that what I've already said that an attorney,  
23 if a district attorney reaches out to us and a  
24 prosecution results in that case that would be indicated  
25 on the spreadsheet and in the sense that that case would



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1 be present. But again, that would probably be a subset  
2 of cases and there wouldn't be an indicator indicating  
3 what type of communication we had or relationship we  
4 might have had with a district attorney on this list.

5 Q. (BY MR. DOLLING) Okay. Before the Court of  
6 Criminal Appeals decision in Stephens, did the OAG ever  
7 investigate suspected offenses under the election code  
8 on the basis of its own information as opposed to based  
9 on a referral from one of the sources we talked about  
10 earlier?

11 MR. HUDSON: Objection based on attorney/  
12 client privilege, work product investigative privilege.  
13 To the extent that you can answer without encroaching on  
14 these privileges, you're free to do so. Otherwise, I'm  
15 instructing you not to.

16 A. I can't think of any non-privileged answer to  
17 that question. I have to follow the advice of counsel,  
18 but I have said previously and I have testified before  
19 the legislature that the vast majority of our  
20 prosecutions, most if not all, have resulted from  
21 referrals to our office and that we are generally a  
22 proactive, not a proactive a reactive unit in terms of  
23 investigating complaints that come to us.

24 Q. (BY MR. DOLLING) Okay.

25 A. There is, you know, to the extent that fraud



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1 takes place and it's not referred to our agency, you  
2 know, it may well go not investigated and a referral  
3 typically needs to be made to us for us to look into a  
4 case.

5 Q. And so to the extent that the OAG operates  
6 proactively in this context you feel like you cannot  
7 answer that question.

8 A. I can say this, there is nothing to preclude us  
9 from being proactive in attempting to detect and  
10 investigate crimes except for the limitations that we  
11 have with bandwidth and the fact that we have our hands  
12 full with the cases that come in to us and we've always  
13 been a responsive unit.

14 Q. Does the OAG engage in any sort of  
15 communications that for lack of a better word solicit  
16 cases from county prosecutors that say we're, like we're  
17 here to help you prosecute cases?

18 MR. HUDSON: Object to the basis. To the  
19 extent that that would encroach on attorney/client  
20 privilege, attorney work product, investigative  
21 privilege, joint prosecution privilege or any other  
22 applicable privilege, I instruct you not to answer. To  
23 the extent that you can answer without encroaching on  
24 those you're free to do so.

25 A. It is not been our general practice to do so.



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1 Q. (BY MR. DOLLING) Okay. Thank you. And then  
2 sort of same questions. After Stephens, has the OAG  
3 ever investigated a suspected offense under the election  
4 code on the basis of its own information?

5 MR. HUDSON: Same objection, same  
6 instruction.

7 A. I'm not aware of any.

8 Q. (BY MR. DOLLING) Okay. Thank you. Okay if we  
9 could turn back to Exhibit No. 5 which was Chapter 273.  
10 Can we go to 273.001b which is right at the top?

11 A. Yes, sir.

12 Q. Okay. So Section 273.001 is entitled,  
13 Investigation of Criminal Conduct; is that correct?

14 A. Yes, sir.

15 Q. I'd like to go to Subsection b which reads, a  
16 district or county attorney having jurisdiction or the  
17 attorney general may conduct an investigation on the  
18 officers own initiative to determine if criminal conduct  
19 occurred in connection with an election; is that  
20 correct?

21 A. That's correct.

22 Q. Does the OAG interpret election code 273.001b  
23 to permit it to conduct investigations of suspected  
24 offenses under the election code independent of any  
25 request from a county prosecutor?



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1 MR. HUDSON: Object to the extent that  
2 encroach upon attorney/client attorney work product  
3 investigative privilege. To the extent you can answer  
4 without addressing that without encroaching on those  
5 privileges, you're free to do so.

6 A. I didn't prepare to give a position of the OAG  
7 on an interpretation of that provision. However, I just  
8 testified that well nothing would preclude our office  
9 from investigating on our own initiative. It's not our  
10 practice to do so generally and we -- we prefer  
11 referrals to come in through our established referral  
12 process that's how we prefer to approach a case.

13 Q. (BY MR. DOLLING) Okay. I think you might have  
14 said this earlier, but is it the OAG's policy typically  
15 to loop in the county prosecutor for the county in which  
16 the suspected offense occurred if the OAG is undertaking  
17 an investigation in that county?

18 A. That's been our practice more and more over  
19 recent years and particularly now since Stephens that's  
20 been a practice.

21 Q. Before Stephens would be the OAG, I -- you sort  
22 of implicitly said it just there. Would the OAG ever  
23 carry out an investigation on its own initiative without  
24 the involvement of the relevant county prosecutor?

25 A. Well, I understand 273.001 to be deferring to

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1 the referral process for an investigation Subsection a  
2 covers the method that two or more registered voters per  
3 territory can present affidavits alleging violations to  
4 either the county or district attorney or us.

5 Subsection b covers an officers own initiative should he  
6 learn of an election offense under some different  
7 circumstances. Subsection d covers our most common and  
8 preferred method which is referral from the Secretary of  
9 State under Section 31.006. We've always relied on them  
10 to sort of perform that in take process for us and so  
11 that's -- that is our preferred method and if I didn't  
12 answer a portion of your question, please feel free to  
13 repeat that.

14 Q. No, I think you -- you answered me. Before  
15 Stephens, had the OAG ever carried out an investigation  
16 despite the relative county prosecutor opposing the  
17 investigation?

18 A. I -- I don't have any recollection of a county  
19 prosecutor opposing a prosecution.

20 Q. Has the OAG modified its policies and practices  
21 after Stephens with respect to how it conducts  
22 investigations into suspected offenses under the  
23 election code?

24 MR. HUDSON: Object to the extent that that  
25 would encroach on the investigative privilege sources



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1 methods etc. To the extent and also attorney product and  
2 attorney/client privilege, to the extent that you can  
3 respond to that without encroaching on those privileges  
4 you're free to do so. Otherwise, I'm gonna instruct you  
5 not to answer.

6 A. We have not hammered out concrete policies, but  
7 a best practice now is to involve a district attorney  
8 early on in an investigation when we can give him a  
9 picture or her, I'm sorry, a picture of the activity  
10 that -- that may have occurred and gauge interest in  
11 prosecution and this is something that DPS and Texas  
12 Rangers generally institute and it's a conservation of  
13 resources policy to where if there is no avenue for  
14 prosecution that you generally don't want to invest a  
15 tremendous amount of resources in that case when you  
16 have other cases to be investigating.

17 Q. (BY MR. DOLLING) Has the OAG initiated any  
18 investigations after Stephens?

19 A. I believe so. Yes.

20 Q. And have any of those investigations been  
21 initiated without looping in the relevant county  
22 prosecutor?

23 MR. HUDSON: Object to the extent that that  
24 would encroach on investigative privilege, attorney work  
25 product, attorney/client privilege. To the extent you



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1 can answer without encroaching on those privileges  
2 you're free to do.

3 A. I'm not aware, but again I'll refer to my  
4 answer previously which is that at some point in the  
5 investigation our best practice would be to take what we  
6 know to a local prosecutor at some point and gauge  
7 prosecutability [sic] and that would be at a -- that  
8 would be at a -- there's no defined point in an  
9 investigation where that conversation would take place.

10 Q. (BY MR. DOLLING) Are there -- is there -- are  
11 there any reasons that the OAG would choose to delay  
12 taking investigation to the relevant county prosecutor  
13 rather than looping them in earlier?

14 MR. HUDSON: Same objection, same  
15 instruction.

16 A. I think that would be deal directly with our  
17 deliberative process so I'll follow the advice of  
18 counsel.

19 Q. (BY MR. DOLLING) For example, if a county  
20 prosecutor was known to not be enthusiastic about  
21 prosecuting election code offenses, would that impact  
22 your decision to loop the county prosecutor into the  
23 process?

24 MR. HUDSON: Objection to the extent that  
25 would encroach on attorney/client, attorney work product



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1 investigative privilege. I instruct you not to answer.  
2 Since you can answer without encroaching on the  
3 privilege you are free to do so. I also object based on  
4 form, foundation, and incomplete hypothetical.

5 A. I think I'd have to refer back to my previous  
6 answer which without getting into our deliberative  
7 process I could only say another privileged information  
8 I can probably just say that if it becomes evident at  
9 some point in an investigation that there is no path to  
10 prosecution should we be able to establish the elements  
11 of offense that our best practice would be to keep that  
12 in mind as we make decisions based on expenditures  
13 investigative resources in that matter.

14 Q. (BY MR. DOLLING) After Stephens, does the fact  
15 that a county prosecutor does not consent to the  
16 prosecution qualify as no path to prosecution?

17 MR. HUDSON: Same objection, same  
18 instruction. Additionally objection; form. Foundation.  
19 Objection; form and incomplete hypothetical.

20 A. I would say because the Stephens' decision is  
21 not yet final there's still certain amount of that that  
22 is influx and that we're waiting to find out.

23 Q. (BY MR. DOLLING) Okay. Have OAG investigators  
24 used warrants in carrying out investigations on the  
25 OAG's own initiative?



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1 MR. HUDSON: Objection to the extent that  
2 it would encroach upon investigative privilege  
3 attorney/client privilege and attorney work product  
4 privilege. I instruct you not to answer to the extent  
5 you can answer without encroaching on those privileges  
6 you're free to do so.

7 Q. (BY MR. DOLLING) I'm not looking for any  
8 specific ongoing criminal investigatory details, just in  
9 general.

10 A. Sure. I'm -- I'm concerned about the use of  
11 the phrase, on the OAG's own initiative being a context  
12 from what we see in the election code which is  
13 pertaining to the type of referral that we get. And so  
14 we consider that when we receive a referral that we are  
15 investigating that based on that referral and not on our  
16 own initiative. So we don't consider any of the  
17 investigations that we do that are responsive to an  
18 election complaint to be on our own initiative.

19 Q. Well, let me clarify by saying, does the --  
20 have OAG investigators used warrants in carrying out  
21 investigations when not in cooperation with the county  
22 prosecutor?

23 MR. HUDSON: Same objection, same  
24 instruction and just to be clear I understand that  
25 counsel has clarified the question to me generally not



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1 in a specific instance.

2 Q. (BY MR. DOLLING) Yeah.

3 A. I'm still a little iffy about your  
4 characterization of not with a local district attorney's  
5 cooperation or involvement or whatever the word that you  
6 used was. I can say that we have used search warrants  
7 in investigations that were opened in connection with a  
8 complaint that we received under Chapter 273.001.

9 Q. Okay. Is the same true of using raids in  
10 carrying out investigations?

11 MR. HUDSON: Same objection, same  
12 instruction.

13 A. We've never used what has been characterized by  
14 us or anyone else to my knowledge as a raid and I'm not  
15 sure what that would entail on the context of an  
16 election investigation.

17 Q. (BY MR. DOLLING) I suppose an example might be  
18 after obtaining a warrant, law enforcement officers go  
19 to a location and collect evidence on the basis of that.

20 A. We wouldn't consider executing a search warrant  
21 to obtain evidence or an arrest warrant for that matter  
22 to be a raid.

23 Q. Okay. But has the OAG utilized that sort of  
24 procedure in investigations?

25 A. If we've -- yes, if we executed a search

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1 warrant or if we have obtained a search warrant, we do  
2 that with the intention of executing the search warrant  
3 whether that's for data or whether that's to collect  
4 evidence.

5 Q. Have OAG investigators interviewed witnesses in  
6 carrying out investigations?

7 A. Of course.

8 Q. Have OAG investigators interviewed suspects in  
9 carry out investigations?

10 A. Yes, to the extent that those suspects are  
11 willing to talk which --

12 Q. Understood. Okay. So can we now go back to  
13 Exhibit 5 and turn to 273.002.

14 A. Sure.

15 Q. And for some reason it starts subsections with  
16 numbers instead of letters this time, but if we look at  
17 Section 273.0021 it says, reading the -- the preliminary  
18 language. For an election in which the attorney general  
19 is conducting an investigation the attorney general may  
20 direct the county or district attorneys serving a county  
21 in the territory covered by the election to conduct or  
22 assist the attorney general in conducting the  
23 investigation; is that correct?

24 A. Yes, sir.

25 Q. Has the OAG ever used this authority to direct



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1 a county prosecutor to conduct an investigation without  
2 the OAG's involvement?

3 MR. HUDSON: Renewed the privilege  
4 objection, same instruction.

5 A. To the extent that there may be a public record  
6 of this request I -- we have never to my knowledge  
7 directed a county or district attorney to conduct or  
8 assist an investigation or prosecution. However, it's  
9 possible that we have used, referenced this provision,  
10 not use the provision, but referenced the provision in a  
11 request that was clearly a request and not a direction  
12 for a local district attorney to assist in an  
13 investigation.

14 Q. (BY MR. DOLLING) Could you put a number on how  
15 often that happens?

16 A. Almost never.

17 Q. Okay. And when it has happened, have the  
18 county attorneys complied or have you had resistance?

19 MR. HUDSON: Objection; form.  
20 Argumentative.

21 A. I don't recall ever having resistance because  
22 probably the way that we approach it with a soft touch.

23 Q. (BY MR. DOLLING) I think you've already  
24 answered this, but I just want to be sure. Has the OAG  
25 ever used the authority in 273.0021 to direct a county



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1 prosecutor to assist the OAG in conducting an  
2 investigation?

3 A. My answer would be the same.

4 Q. Soft touch, but not directing?

5 A. Correct and I'll also refer back to a previous  
6 answer that I gave. District attorney's offices have  
7 very limited ability and resources in the investigation  
8 department. So that's another reason that this section  
9 has not been frequently used.

10 Q. Okay. Does the OAG interpret any other  
11 provision of Texas law to give it similar authority to  
12 direct a county prosecutor to take actions regarding  
13 suspected offenses under the election code?

14 MR. HUDSON: Objection to the extent that  
15 that would encroach upon attorney/client privilege,  
16 attorney work product doctrine, investigative privilege,  
17 or any other applicable privileges. I instruct you not  
18 to answer. To the extent you can answer without  
19 encroaching on those you're free to do so.

20 A. I'll follow that advice and say that I am not  
21 aware of any other authority in Texas law that  
22 authorizes the attorney general to direct local  
23 prosecutors to investigate or prosecute.

24 Q. (BY MR. DOLLING) Okay. Thanks. That reminds  
25 me I'd like to just step back very quickly to our



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1 discussion about the OAG investigating suspected  
2 offenses and, you know, we talked about how best  
3 practice is to loop the county prosecutor in earlier  
4 rather than later. Does the OAG consider any Texas law  
5 other than Chapter 273 to give it authority to  
6 independently investigate suspected offenses under the  
7 election code?

8 MR. HUDSON: Same objection, same  
9 instruction.

10 A. I think I answered that question earlier that,  
11 again, while I'm not prepared to enter law on behalf of  
12 the Attorney General's office I'm not aware of any other  
13 authority under Texas law to independently prosecute  
14 election offenses.

15 Q. (BY MR. DOLLING) Or investigate election  
16 offenses?

17 A. Oh, I'm sorry. Our officers are state police  
18 with statewide jurisdiction to investigate crimes and as  
19 state police officers, we have many other divisions  
20 within the criminal investigation division that that  
21 prosecute a variety of different crimes and they do so  
22 under the same type of authority as DPS has as state  
23 wide peace officers. So I'm not familiar with the exact  
24 provisions of law that they grant that authority to  
25 state police, but there would be independent authority



1 for investigations of general crimes under other law.

2 Q. Okay. And we talked about this earlier, but I  
3 just like to, you know, clarify. The majority of  
4 investigations are carried out in -- to some degree with  
5 cooperation from the county prosecutor; is that correct?

6 A. Could you repeat the first part of your  
7 question?

8 Q. The -- would you say that the majority of  
9 investigations into election code offenses are carried  
10 out with the cooperation of a county prosecutor?

11 A. I think to some degree that's probably true and  
12 just to present a case to a grand jury requires the  
13 permission of a local prosecutor to get time before his  
14 grand jury and present that case and actually the grand  
15 jury doesn't belong to the prosecutor, but access to the  
16 grand jury is for practical purposes controlled by that  
17 District Attorney's Office. So the grand jury is its  
18 own entity that's appointed by a district judge, but  
19 yes, in answer to your question I would say that we  
20 generally have some form of cooperation in every case  
21 that we prosecute from the local prosecutor's office.

22 Q. And similar series of question from before.  
23 When carrying out these sort of joint investigations, do  
24 the OAG and county prosecutors utilize warrants during  
25 that process of investigation?



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1 general may appear before a grand jury in connection  
2 with an offense the attorney general is authorized to  
3 prosecute under Subsection a. Subsection d -- c, the  
4 authority to prosecute prescribed by the subchapter does  
5 not affect the authority to arrive from other law to  
6 prosecute the same offenses. Did I read that correctly?

7 A. I believe you did, sir.

8 Q. I don't want to ask too many redundant  
9 questions. So just give me a moment here.

10 A. No problem.

11 Q. Prior to Stephens, did the OAG ever prosecute a  
12 suspected offense under the election code within a  
13 county despite that county's prosecutors office knowing  
14 about it and opposing the prosecution?

15 MR. HUDSON: Objection; form. Asked and  
16 answered. Objection. Same objections concerning  
17 privilege, same instructions.

18 A. My answer to that question before is, as far as  
19 I'm aware, I don't know of any instance where a local  
20 district attorney has opposed our prosecution.

21 Q. (BY MR. DOLLING) I know that we spoke about  
22 how the OAG's office is waiting for the mandate to issue  
23 in Stephens, but outside of Section 273.021, do you know  
24 or what provision of Texas law allows the OAG to work  
25 with county prosecutors to prosecute an offense?



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1 MR. HUDSON: I'll object to the extent that  
2 that would encroach upon attorney/client privilege,  
3 attorney work product doctrine, deliberative process  
4 privileges. To the extent you can answer without  
5 encroaching on those you're free to do so. I will also  
6 instruct you not to.

7 A. Yeah, I don't believe that was a topic that I'm  
8 prepared to answer on behalf of the attorney general,  
9 but from my knowledge of the law, I'm just trying to  
10 recall your question specifically. Could you help me  
11 with it? I'm sorry, just the gist of the question.

12 Q. (BY MR. DOLLING) I'm just curious, it doesn't  
13 I mean like, I'm just curious if you know what provision  
14 of law allows the office of the attorney general to  
15 work --

16 A. Yes, I'm sorry. Recalling your previous  
17 question.

18 MR. HUDSON: Objection. Same instruction.

19 A. Subject to those, I believe it's Article 2.07  
20 of the Code of Criminal Procedure describes the process  
21 for us to be appointed as a district attorney pro tem.  
22 When a district attorney has a conflict or other reason  
23 that he or she cannot be involved in a case, that  
24 district attorney can recuse, we may be appointed by a  
25 district judge to serve as district attorney pro tem.



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1 We step into the shoes of the district attorney and  
2 prosecute under a district attorney's authority.

3 Q. (BY MR. DOLLING) So have situations in which  
4 the OAG -- so do you interpret the law to require that  
5 the county prosecutor has to be unavailable for some  
6 reason before the OAG can do that?

7 MR. HUDSON: Same objection, same  
8 instruction.

9 A. Again, that's one, just one route under Article  
10 2.07, but the ways that you can get there are the  
11 attorney -- if the district attorney has a conflict that  
12 they need to recuse from the case, there might be  
13 another element, and then the final element was  
14 unavailable. We typically don't see the unavailability  
15 as much as we see the personal conflict, political  
16 conflict come into play with the district attorney and  
17 that's typically the process that happens under those  
18 circumstances which we normally see which is a motion to  
19 recuse filed by the district attorney with the district  
20 court, the district court then signing an order  
21 appointing a DA pro tem, and appointing us or it could  
22 be another local prosecutor as the district attorney pro  
23 tem in that matter.

24 Q. (BY MR. DOLLING) Earlier -- earlier when we  
25 were talking about how in a number of these pending



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1 prosecutions the OAG had been appointed by a county  
2 prosecutor, were you referring to this sort of  
3 situation?

4 A. In the cases that I identified off of  
5 Exhibit 6, I was referring in those cases. I believe  
6 all of those were yes, an order appointing a district  
7 attorney pro tem for the reason of a district attorney  
8 having to recuse due to a local conflict.

9 Q. When you say political conflict, a local  
10 conflict, can you give me an example?

11 MR. HUDSON: Objection to the extent that  
12 that would encroach on attorney/client privilege,  
13 attorney work product, or investigator privilege.  
14 Instruct you not to answer to the extent you can answer  
15 without encroaching on those privileges you may do so.

16 A. I can give you an example without identifying  
17 any particular case in order to preserve any privileges  
18 and that might be where a local district attorney  
19 would -- would be in a position where the, you know, the  
20 target of the investigation is another political  
21 official or elected official in the county. A person  
22 who he may have some sort of relationship with or a  
23 politically connected person in the county that would  
24 cause a significant conflict for the district attorney  
25 or the district attorney's office to be involved in the



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1 case.

2 Q. (BY MR. DOLLING) Has this process ever been  
3 used where the basis for the recusal was political  
4 unpopularity of the -- the prosecution?

5 MR. HUDSON: Same objection, same  
6 instruction.

7 A. From -- right, with -- with limiting myself to  
8 the public record no, I'm not aware of unpopularity of  
9 prosecuting election fraud offenses being used  
10 previously as a basis for a DA's recusal.

11 Q. (BY MR. DOLLING) Okay. I'm gonna hand you  
12 what I'm marking as, I think, are we on 7? And this is  
13 Texas government code Section 402.028 entitled  
14 assistance to prosecuting attorneys; is that correct?

15 (Exhibit No. 7 marked.)

16 A. Yes, sir.

17 Q. (BY MR. DOLLING) So I'm just gonna read it out  
18 quickly. Subsection a says, at the request of a  
19 district attorney, criminal district attorney, or county  
20 attorney, the attorney general may provide assistance in  
21 the prosecution of all manner of criminal cases,  
22 including participation by an assistant attorney  
23 general, as an assistant prosecutor when so appointed by  
24 the district attorney, criminal district attorney, or  
25 county attorney. Subsection b, a district attorney,



1 criminal district attorney, or county attorney, may  
2 appoint and deputize an assistant attorney general, as  
3 assistant prosecutor to provide assistance in the  
4 prosecution of criminal cases including the performance  
5 of any duty imposed by law on the district attorney,  
6 criminal district attorney, or county attorney.

7 Subsection c, nothing in this section shall prohibit an  
8 assistant attorney general from appointment as attorney  
9 pro tem under the provisions of article 2.07 code of  
10 criminal procedures; is that correct?

11 A. Yes, sir.

12 Q. And so --

13 MR. HUDSON: I might just put out on the  
14 record for you. I think the court reporter's losing her  
15 mind a little bit trying to keep up with you.

16 Q. (BY MR. DOLLING) I can slow down.

17 MR. HUDSON: Yeah, I'm not trying to step  
18 on you, she's having some problems.

19 Q. (BY MR. DOLLING) Just want to try to get  
20 through as quickly as possible. I will slow down in the  
21 future. I apologize. So Subsection c is what we were  
22 just talking about, the attorney pro tem.

23 A. Yes, sir.

24 Q. (BY MR. DOLLING) I'd like to talk about  
25 Subsection a and b. Does the OAG interpret the Texas



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1 government code 402.028 to give it authority to  
2 prosecute a suspected offense under the Texas election  
3 code when requested to do so by a county prosecutor?

4 MR. HUDSON: Object to the extent that that  
5 would encroach on attorney/client privilege, attorney  
6 work product doctrine, or investigative privilege. To  
7 the extent you can respond without encroaching on these  
8 privileges you're free to do so. Otherwise, I'm  
9 instructing you not to answer.

10 A. Right. And without -- to remain consistent,  
11 this isn't one of the areas I'm prepared to give an  
12 interpretation of -- of the office of the attorney  
13 general on a specific law, but my understanding of the  
14 law is I believe that is correct.

15 Q. (BY MR. DOLLING) Has the office of the  
16 attorney general, after Stephens been appointed to  
17 prosecute an election code related offense under  
18 Subsection a or b as opposed to c which is what we were  
19 talking about earlier the pro tem provision?

20 A. I don't know that we have any such agreements  
21 on the public record. And without giving the impression  
22 that there aren't any agreements to proceed corporately  
23 in cases, I want to remain consistent and stick with  
24 what is publicly available and I don't believe that we  
25 have any filed deputization's on the record in any of



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1 assistant attorney general as an assistant prosecutor.

2 Q. And we sort of covered this before, but has --  
3 are any assistant attorney general's currently appointed  
4 under Subsection A or B to assist in the prosecution of  
5 a pending prosecution by a county prosecutor?

6 A. I don't believe we have deputization on file.  
7 I believe that the situations where we have been  
8 formally appointed have been under a code of criminal  
9 procedure Article 2.07 as district attorney pro tem.

10 Q. Would it be accurate to say that the list of  
11 pending prosecutions on Exhibit 6 include cases in which  
12 the OAG has been formally appointed pro tem and  
13 informally appointed via some sort of operation of  
14 402.028 Subsection A or B?

15 MR. HUDSON: Object to the extent that it  
16 calls for attorney/client privileged, attorney work  
17 product, or investigative privilege. To the extent you  
18 can answer without encroaching on these privileges  
19 you're free to do so. Otherwise, I instruct you not to  
20 answer.

21 A. I wouldn't want to characterize the -- the  
22 communications or -- or understanding in any specific  
23 way, but we are working cooperatively with district  
24 attorneys in a number of these cases.

25 Q. (BY MR. DOLLING) Are there any of these cases